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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 05 2015**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to Part 6 of the petition, the petitioner seeks classification as an “alien of extraordinary ability” as a producer/writer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. In the cover letter accompanying the petition, the petitioner asserted that she possessed “the high level of skill and expertise required to fulfill the position as Executive Producer, Writer and Journalist.” Within this letter, the petitioner also discussed her past accomplishments as an actress. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief with additional documentary evidence. For the reasons discussed below, we agree that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the petitioner's sustained acclaim and the recognition of the petitioner's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Continuing in the Field of Expertise

The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). The petitioner proposes to work in multiple areas, one of which must fall within her area of expertise. The Standard Occupational Classification (SOC) number the petitioner listed on the petition is 27-2012, which relates to producers and directors.¹ According to the Bureau of Labor Statistics' Occupational Outlook Handbook (OOH), an executive producer creates "motion pictures, television shows, live theater, and other performing arts productions. They interpret a writer's script to

¹ *See* <http://www.onetonline.org/find/result?s=27-2012&g=Go>, accessed on May 1, 2015, a copy of which is incorporated into this record of proceeding.

entertain or inform an audience.”² The petitioner is also an author of fiction and travel guide books. The OOH provides that writers and authors “develop written content for advertisements, books, magazines, movie and television scripts, songs, and online publications.”³ The OOH indicates a journalist’s duties are to, “inform the public about news and events happening internationally, nationally, and locally. They report the news for newspapers, magazines, websites, television, and radio.”⁴ Finally, for an actress, the OOH reflects the duties are to, “express ideas and portray characters in theater, film, television, and other performing arts media. They also work at theme parks or other live events. They interpret a writer’s script to entertain or inform an audience.”⁵ These are four distinct occupations and the petitioner has not presented persuasive evidence or discussion to establish that any of the four are closely related such that she may combine evidence from two or more of these occupations to establish that she enjoys extraordinary ability in one of these occupations.

Relating to a similar issue, a Federal Court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Lee v. Ziglar, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002). The court noted a consistent history in this area. A more recent Federal Court provides a similar interpretation. In *Hristov v. Roark*, 09-CV-2731, 2011 WL 4711885 (E.D.N.Y. Sept. 30, 2011), the court stated:

[T]he AAO accurately noted that the second requirement of 8 U.S.C. § 1153(b)(1)(A) [section 203(b)(1)(A) of the Act] necessitates that the plaintiff “continue [to] work in the area of extraordinary ability.” It was reasonable for the USCIS to interpret continuing to work in one’s “area” as actually working in the same profession and not merely the same field.

As the petitioner’s proposed occupations are separate and distinct, for her to qualify for this immigrant classification, she must demonstrate that she meets at least three criteria relying on evidence from only one occupation. The director concluded that the petitioner’s achievements as an actress were not relevant as she did not propose to continue working as an actress. The petitioner does not challenge that

² See <http://www.bls.gov/ooh/entertainment-and-sports/producers-and-directors.htm>, accessed on April 21, 2015, a copy of which is incorporated into the record of proceeding.

³ See <http://www.bls.gov/ooh/media-and-communication/writers-and-authors.htm>, accessed on April 21, 2015, a copy of which is incorporated into the record of proceeding.

⁴ See <http://www.bls.gov/ooh/media-and-communication/reporters-correspondents-and-broadcast-news-analysts.htm>, accessed on April 21, 2015, a copy of which is incorporated into the record of proceeding.

⁵ See <http://www.bls.gov/ooh/entertainment-and-sports/actors.htm>, accessed on April 21, 2015, a copy of which is incorporated into the record of proceeding.

conclusion on appeal and we agree with the reasoning. Accordingly, we will consider the evidence as it pertains to her achievements as producer, journalist and children's author.

B. Translated Evidence

Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R § 103.2(b)(3). Some of the translation certifications accompanying the petitioner's foreign language documents do not meet the regulatory requirements. With the exception of the translation of the petitioner's Master's degree, the initial certifications are not dated, they do not identify which translations they certify, and the initial certifications as well as the one on appeal are photocopies of the same certification. Moreover, that copy refers to letters, yet the copies of this single certification supports translations of documents other than letters. Additionally, one of the certifications the petitioner submitted in response to the RFE is unsigned. Such documentation is not probative evidence that the certification relates to all or any of the translations in this record of proceeding. Regardless, as the director did not raise any concerns about the translations, we will consider them below.

C. Evidentiary Criteria⁶

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the petitioner is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

Author

The petitioner provides multiple instances in which a book she authored received recognition at book fairs, festivals and competitions. The director determined that the petitioner did not meet the plain language requirements of this criterion as she did not produce evidence that she, or the books she authored received an actual prize or award. On appeal, the petitioner concedes that her books did not win an actual award, but indicates that being considered as a finalist in these venues is recognition of a significant contribution to the field.

⁶ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

The regulation governing the prizes and awards criterion requires: “Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” 8 C.F.R. § 204.5(h)(3)(i). To meet the plain language requirements of this criterion, the petitioner must be the named award recipient establishing her “receipt” of the award. *See Hristov*, 2011 WL 4711885, at *7. *Compare* 8 C.F.R. § 214.2(o)(iv)(A) (permitting evidence of a nomination for a significant national or international award or prize). We will consider the issue of contributions to the field below.

Without any such prizes or awards, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

This criterion contains multiple evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner’s work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item’s title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director’s primary reason for concluding the petitioner had not satisfied this criterion was a lack of evidence demonstrating the published material originated from one of the regulatory required publication types; professional or major trade publications or other major media. The director also indicated that many of the articles lacked the title, date, and author of the material. The petitioner’s appellate brief does not discuss any of these identified shortcomings beyond the assertions provided in the petitioner’s RFE response. Rather, on appeal, the petitioner submits additional evidence consisting of two interviews from foreign language sources. The materials the petitioner submits on appeal appeared in [REDACTED] and [REDACTED] in October 2014, after the date of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Accordingly, the October 2014 interviews are not evidence of the petitioner’s eligibility in April 2014 when she filed the petition. We will address the remaining published material below.

Author

The petitioner provided an interview conducted in September of 2011 by [REDACTED] an online association of editors. The regulation requires evidence that the published material appear in professional or major trade publications or other major media. However, the petitioner relies on information from [REDACTED] website, which does not indicate that the website is one of the regulatory required publication types. While Internet sites are technically accessible nationally and even internationally, we will not presume that every Internet site has significant national or international viewership. The act of posting an article online does not necessarily constitute publication in major media. The materials relating to [REDACTED] address the objectives of the association, and do not indicate that this website routinely attracts national or international attention.

The director noted that much of the evidence under the published material criterion submitted in response to the RFE postdated the petition's priority date. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. The previous published material that postdates the petition filing date appeared in [REDACTED] and [REDACTED].

Additionally, some of the petitioner's evidence relating to the significance of the publications derives from the website *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited Internet site.⁷ *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). This evidence relates to the newspaper, [REDACTED]. Therefore, this documentation carries no evidentiary weight within the present proceedings. The evidence that lacks the title, date, or author of the published material consists of evidence from [REDACTED].

The petitioner identifies several articles that review her books, rather than published material about the petitioner and relating to her work. Specifically, the authors did not discuss the petitioner; instead the author critiques the petitioner's book. The book reviews that are not published material about the petitioner include the evidence from [REDACTED] and [REDACTED]. The petitioner also provided evidence deriving from various blogs, but did not provide evidence demonstrating that any of the blogs constitute a form of major media.

⁷ Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. *See* http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 21, 2015, a copy of which is incorporated into the record of proceeding.

Actress

As discussed above, the petitioner has not responded to the director's conclusion that the petitioner's achievements as an actress are not relevant to her eligibility as a producer/writer of extraordinary ability. We concur for the reasons discussed above. Regardless, the published material relating to the petitioner's work as an actress provides general information relating to French American TV, but is not about her, relating to her work in the field from French American TV. The petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions in her field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner primarily relies on letters provided on her behalf under this criterion. The director determined that the petitioner did not meet the requirements of this criterion.

Executive Producer

The July 9, 2014 letter from [REDACTED] a film-maker, describes how the petitioner is adept as a producer, and how the petitioner produces high quality documentaries. [REDACTED] explains that she has never previously worked with the petitioner and was approached for an objective evaluation. She further explains that she reviewed the material the petitioner submitted to the director and performed additional research. She does not indicate that she was previously aware of the petitioner's work prior to being approached for an evaluation. She indicates that the petitioner makes contributions culturally because she educates the French public on American traditions. At issue is not whether the petitioner has contributed to her audience's knowledge, but whether she has made contributions "in the field." Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). In the area of production [REDACTED] indicates the petitioner brings in a more factual specificity to documentaries than is normally used in television, resulting in an increase of intensity that leaves the viewer with a more personal

approach about the subject. [REDACTED] does not however, describe how the petitioner's techniques have impacted the production industry, nor does she explain that any portion of the industry has adopted the petitioner's methods. As such, she has not provided details demonstrating the petitioner has satisfied this criterion's requirements.

Regarding the letter from [REDACTED] Head of Productions at the press agency and broadcast company [REDACTED] the translator's certification of his letter is a photocopy, is not dated, and does not name the document it is certifying other than "all the letters on behalf of [the petitioner]." Further, the actual letter bears a date, but the translator did not include that date in the English language translation. Within his letter, [REDACTED] only describes work the petitioner has performed in collaboration with [REDACTED] rather than the manner in which she has made original contributions of major significance in her field.

Regarding the letter from [REDACTED] a reporter for the French television show [REDACTED] the translator's certification of this letter is a photocopy, is not dated, and does not name the document it is certifying beyond "all the letters on behalf of [the petitioner]." Further, the actual letter bears a date, but the translator did not include that date in the English language translation. [REDACTED] letter describes the quality work the petitioner performed for [REDACTED] and the importance of that work to [REDACTED] but does not refer to any of the petitioner's original contributions of major significance in the field.

The remaining evidence relating to the petitioner's work as an executive producer consists of a letter from [REDACTED] Executive Director at [REDACTED] describing how the petitioner's work helped improve individual projects. However, this letter does not establish that the petitioner has made any original contributions of major significance in her field as an executive producer. The petitioner also provides evidence relating to documentaries with which she is associated, but did not provide evidence demonstrating how her work on these documentaries was an original contribution of major significance in the field such that it impacted the field.

Author

The record includes an undated letter from [REDACTED] Programming Director Assistant and Coordinator at the [REDACTED] characterizes the petitioner's original contributions in the field as assisting in popularizing books targeting teenagers as well as the characters the petitioner has developed. However, [REDACTED] did not identify the impact of these techniques in the petitioner's field as an author. Such claims, without more detail and corroborating evidence, do not meet the petitioner's burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner provides two letters from [REDACTED] the Collections Manager for [REDACTED] in France. The translation for the first letter is accompanied by a photocopied certification that does not identify the translations it is certifying beyond "all the letters on behalf of [the petitioner]," and the translation of the letter the petitioner submitted within the RFE response is not accompanied by a

translator's certification. [REDACTED] describes the petitioner's success as an author of youth novels and praises her abilities to develop characters. While [REDACTED] asserts that the petitioner "brought a new style of literature" to French youth novels, he does not explain how the petitioner's work constitutes a contribution of major significance in the petitioner's field.

The letter from [REDACTED] a script writer and film director is accompanied by a photocopied translator's certification that does not identify the translation it certifies beyond "all the letters on behalf of [the petitioner]." [REDACTED] recognizes the petitioner's talents within his letter, but does not provide the nexus between her talents and the manner in which she has made original contributions of major significance in her field. The remaining letters pertaining to the petitioner's work as an author focus on her accomplishments, her talents, or contributions to individual projects or companies. However, the authors do not provide a description of how the petitioner's authored works, individually or as a whole, have made an impact in her field in accordance with the regulation. Further, the petitioner's appeal brief does not provide analysis of how any of her work as an author has significantly impacted the field.

Additionally, the petitioner indicates that her books' recognition or awards constitutes a contribution of major significance in the field due to the prestige of those who sat in judgment on the awarding juries. The regulation at 8 C.F.R § 204.5(h)(3)(i) is a separate criterion pertaining to awards. While some awards might also be relevant to whether the petitioner has made original contributions of major significance, the petitioner must demonstrate the relevance of her recognition at competitions to this criterion. The record does not contain evidence to establish this relevance, such as evidence that the awards recognize books that have influenced the field as opposed to recognizing quality books.

Journalist

The letter from [REDACTED] Head of Programming for [REDACTED] in France, is accompanied by a photocopied translator's certification that does not identify the translations it certifies beyond "all the letters on behalf of [the petitioner]." [REDACTED] confirms the petitioner made contributions to the television channel, but does not indicate that her work was a major contribution in the petitioner's field. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer. *See Visinscaia*, 4 F. Supp. 3d 126, at 134 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

The letter from [REDACTED] former Chief Executive Officer of multiple French television channels, is accompanied by a photocopied translator's certification that does not identify the translations it certifies beyond "all the letters on behalf of [the petitioner]." [REDACTED] provides the petitioner's background in journalism and discusses her work on a documentary, but does not provide information relating to how the petitioner's work has contributed to her field as a whole. Also, [REDACTED] Chief Executive Officer of [REDACTED] a French-language Internet based magazine located in the United States, briefly discusses the petitioner's work for his company as well as her pursuits in other fields. However, he does not explain how her work for his company is tantamount to a contribution of major significance to the field as a whole.

Although the petitioner documented articles that she authored in French language publications, and television shows to which she contributed, she did not provide an explanation or evidence demonstrating how these articles and television shows have impacted the field such that they are an original contribution of major significance in the field.

Television Host

letter is accompanied by a photocopied translator's certification that does not identify the translations it certifies beyond "all the letters on behalf of [the petitioner]." Director of Development at outlines the petitioner's success as a television host and their work history, but he does not indicate that the petitioner's work in the field has resulted in original contributions of major significance.

Actress

As discussed above, the petitioner has not responded to the director's conclusion that the petitioner's achievements as an actress are not relevant to her eligibility as a producer/writer of extraordinary ability. We concur for the reasons discussed above.

Regardless, the petitioner has not demonstrated that her talent as an actress has impacted the field such that it constitutes a contribution of major significance to the field. The petitioner provides a list of theater plays in which she performed or produced. She also provides a letter from Head of the Drama Department at describes how well the petitioner has performed for his company acting, writing, and in marketing. states that the petitioner has created a Facebook page relating to French speakers in the San Francisco area that reaches approximately 2,500 people. The information provides does not reflect that the petitioner has made contributions in her field as required by the regulation.

Summary

The petitioner, and others on her behalf, have described her accomplishments in multiple fields, but none have identified any original contributions of major significance in any of the indicated fields. Achievements in one's field, however, are not necessarily indicative of original contributions of major significance. It is not enough to be skillful and knowledgeable and to have others attest to those talents. The petitioner must have demonstrably impacted her field in order to meet this regulatory criterion. See 8 C.F.R. § 204.5(h)(3)(v); see also *Visinscaia*, 4 F. Supp. 3d at 134. The reference letters submitted by the petitioner briefly discuss her artistic skills and activities, but they do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance. Moreover, many of the letters conclude that the petitioner meets the requirements of the regulations with little explanation of how her achievements have influenced the field. By itself, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is “self-serving.” See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. at 1136.

Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that “letters from physics professors attesting to [the petitioner’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner’s skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding the petitioner’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner’s eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). See also *Visinscaia*, 4 F.Supp.3d at 134-35 (concluding that USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). While letters that are accompanied by sufficient translations and are authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere. Such independent evidence might include but is not limited to letters from independent industry experts with firsthand knowledge of the petitioner’s impact in the field, media coverage, and citations to the petitioner’s work.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

A leading role should be apparent by its position in the overall organizational hierarchy and the role’s matching duties. The petitioner has the responsibility to demonstrate that she actually performed the

duties listed relating to the leading role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."⁸ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments included under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The director determined that the petitioner did not meet the requirements of this criterion.

The director concluded that while the petitioner documented her role on various projects, the petitioner must demonstrate her leading or critical role for an organization or establishment. On appeal, the petitioner repeats her assertions made in response to the director's RFE without explaining how this evidence demonstrates her leading or critical role for an organization or establishment rather than for a specific project. Assuming the petitioner performed in a leading or critical role for the group within the organization or establishment that produced the single project on which the petitioner worked, the petitioner must demonstrate that the project itself enjoys a distinguished reputation. The petitioner's appellate brief does not address this issue.

Executive Producer

The petitioner identifies evidence relating to the following entities under this criterion: [REDACTED] channel; [REDACTED] television channel and [REDACTED] a French television documentary series; [REDACTED]

[REDACTED] television channel; [REDACTED] and [REDACTED]

Some of the evidence relating to these entities is in a foreign language and the translation is a photocopy that does not identify the translations it is certifying other than "all the letters on behalf of [the petitioner]." The translation, however, is not a translation of a letter. In addition, the petitioner relies on evidence that derives from *Wikipedia*. As discussed above, evidence from *Wikipedia* is not reliable. See *Lamilem Badasa*, 540 F.3d at 909.

The record contains no evidence that the documentary on which the petitioner worked for the [REDACTED] television channel enjoys a distinguished reputation. The petitioner worked on a documentary for the [REDACTED] series on [REDACTED]. The letter from [REDACTED] a journalist and television reporter who works on [REDACTED] is also accompanied by a photocopied translator's certification, as noted above. [REDACTED] indicates that [REDACTED] and that the show has been on the air for [REDACTED]. The petitioner also submits evidence demonstrating that the show itself has numerous "likes" on Facebook. Even if we consider this evidence in conjunction with the [REDACTED]

⁸ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on April 21, 2015, a copy of which is incorporated into the record of proceeding.

translated evidence from www.tele.premier.fr as establishing that the show [REDACTED] enjoys a distinguished reputation, the petitioner did not demonstrate her leading or critical role for the organization that produces the entire documentary series. Rather, she performed in a leading or critical role for the group within the [REDACTED] organization that produced this one episode. The petitioner's episode reflects far fewer "likes." The petitioner has not demonstrated how this number compares with other distinguished French documentaries.

The petitioner references a documentary entitled [REDACTED]. The petitioner asserts that one of the several exhibits under "Tab 18" pertains to this documentary. The petitioner did not tab or otherwise number her exhibits and a review of the record reveals no evidence that establishes that this documentary enjoys a distinguished reputation.

Regarding the [REDACTED], the petitioner worked on a documentary titled, [REDACTED] for this institution. The petitioner provided a portion of the "About Us" page from the institute's website, but did not include the portion relating to the institute's impact. She also provided information about the institute from *Wikipedia*, which, as we noted above, is not reliable evidence. The petitioner has not provided evidence to establish that this institute enjoys a distinguished reputation. Regarding the petitioner's performance for the institute, the petitioner provides the same letter discussed under the contributions criterion from [REDACTED] Executive Director at the institute. [REDACTED] states: "[The petitioner] and her production company played an essential role in the final outcome of [the documentary]." [REDACTED] does not indicate that the petitioner performed in a leading or critical role for his institute; instead, he addresses the project in which the petitioner was involved. The petitioner does not claim that the project itself enjoys a distinguished reputation. Therefore, the petitioner has not demonstrated that her role for the documentary qualifies her under this criterion.

[REDACTED] Head of programming at [REDACTED] discusses the petitioner's work as a television host and her role for a documentary about the preparations in Canada for the visit of [REDACTED]. [REDACTED] asserts that the network rebroadcast the documentary based on its appeal to viewers and implies that it won an award as "one of the best documentary about horses [in] 2012." The petitioner submitted evidence that a festival, in partnership with [REDACTED] showed the documentary. The record does not contain an award for this documentary. Accordingly, the petitioner did not establish the reputation of the documentary. The petitioner did not provide translations for some of the materials about [REDACTED] although it appears to have a presence on Facebook and followers on Twitter. The petitioner submitted googletranslate translations for other information about [REDACTED] which does not comply with 8 C.F.R. § 103.2(b)(3). Regardless, the materials confirm that [REDACTED] is a network dedicated to horses, but does not discuss its reputation.

While the petitioner provided information about the [REDACTED] she did not document her role for this forum or its reputation. Similarly, the petitioner provided information about [REDACTED] but no evidence from this entity explaining her role for them. The petitioner submitted the credits for [REDACTED], and [REDACTED] but no evidence relating to the reputation of these documentaries.

The petitioner also points to the same letter from [REDACTED] referenced under the contributions of major significance criterion. The petitioner's appellate brief indicates that "[REDACTED] confirms the lead role that [the petitioner] had in her productions." [REDACTED] does not, however, explain how the petitioner's role was leading or critical for the television channels as a whole and while she praises some of the documentaries, she does not provide examples of how they enjoy a distinguished reputation.

Author

The petitioner provides articles she authored in [REDACTED]. She also offers a letter from [REDACTED] discussed under the contributions criterion. Within [REDACTED] letter, he indicates that the petitioner has become an essential part of the publication. He mentions the petitioner's versatility and qualifications, but does not specify how she has performed in a leading or critical role for [REDACTED]. Specifically, he does not explain where the petitioner fits within the overall hierarchy of the publication or how she has impacted the organization.

The petitioner also indicates she performed in a leading or critical role for [REDACTED]. The petitioner provides two letters each from [REDACTED] the Collections Manager for [REDACTED] in France, and [REDACTED] the owner and founder of [REDACTED]. Both of [REDACTED] foreign language letters are accompanied by a photocopied translation certification or lack a translator's certification, which is required by the regulation at 8 C.F.R. § 103.2(b)(3). [REDACTED] discusses the petitioner's role collaborating on the authorship of a book [REDACTED] published and her authorship of other books, including one [REDACTED] released after the date of filing. He does not, however, explain her role within the hierarchy of the publishing company, the impact of her book on the publishing house, such that his letters establish that she performed in a leading or critical role for the publishing house. Moreover, some of the information pertaining to the reputation of [REDACTED] derives from the company and the petitioner translated all of the information about this company through googletranslate, which does not comply with 8 C.F.R. § 103.2(b)(3). Regardless, the information discusses the publishing company's history but does not indicate its overall reputation.

Within [REDACTED] letter, he explains that the petitioner has assisted [REDACTED] in identifying new and interesting subjects and authored a book that, as of the date of his letter in 2012, had yet to be released. He does not, however, specifically explain how she performed in a leading or critical role for his organization. The record does reflect that [REDACTED] has published numerous guides to living in various countries and the petitioner authored the company's guide to living in the United States. Even if we accepted that the petitioner has performed in a critical role for the company's division pertaining to living abroad guides, the petitioner must demonstrate that division enjoys a distinguished reputation. [REDACTED] only indicates that he is proud that [REDACTED] is on the committee of national French employers that decides who should receive the national press card. However, [REDACTED] did not detail how many members comprise the committee, nor did he demonstrate the significance of this committee. The materials the petitioner submitted pertaining to [REDACTED] part of the [REDACTED] provides that it "is a certified press agency with numerous bureaus and affiliates." This information does not demonstrate that the residing abroad guides [REDACTED] publishes enjoy a distinguished reputation.

The petitioner also provides a letter from [REDACTED] former Consul General for the [REDACTED] [REDACTED] provides praises for the petitioner's work as an author and producer, but he does not explain her role for a specific organization or establishment. The petitioner also identifies the letter from [REDACTED] discussed above. Within her letter, [REDACTED] states that she has never worked with the petitioner, although one of the petitioner's books was in the finals of a competition in which [REDACTED] served as the director's assistant. However, [REDACTED] does not describe how the petitioner might have performed in a leading or in a critical role by being a finalist in the competition.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion requires a petitioner to establish eligibility through volume of sales or box office receipts as a measure of the petitioner's commercial success in the performing arts.

The petitioner offers the same evidence submitted to the director within the RFE response. The director determined that the petitioner did not meet the requirements of this criterion and the petitioner has not rebutted the director's findings. The petitioner submits online information for [REDACTED] and [REDACTED] [REDACTED]

First, authoring books does not fall under the performing arts as required by the regulation at 8 C.F.R. § 204.5(h)(3)(x). Regardless, even if we were to consider the evidence as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner has not provided evidence that is comparable to the evidence required under 8 C.F.R. § 204.5(h)(3)(x). Specifically, the release date for [REDACTED] postdates the petition filing date, which the director noted in the decision. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. at 49. The evidence relating to [REDACTED] is in a foreign language and is not accompanied by the translation into English nor is the regulatory required translator's certification part of the record. Moreover, it is not apparent from a review of the foreign language documents that they specify actual sales numbers rather than just the retail price. Such evidence does not comply with the terms of 8 C.F.R. § 103.2(b)(3) and will not serve as probative evidence. Further, the petitioner did not offer any additional specifics within the appeal, nor did she provide evidence for other commercially successful book sales to which we could compare to her book sales.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. Summary

For the reasons discussed above, we agree with the Director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.⁹

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

⁹ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).